

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DARWIN YAZZIE,

Plaintiff,

v.

No. 1:15-CV-00109 JAP-LF

BOARD OF COUNTY COMMISSIONERS
FOR RIO ARRIBA COUNTY, et al,

Defendants.

ORDER COMPELLING COMPLIANCE WITH SUBPOENA

THIS MATTER comes before the Court on defendants' Motion to Compel Compliance with Subpoena (Doc. 36). Eddie Velarde, the person to whom the subpoena was directed, did not file a response to the motion, and the time to do so has passed. *See* Doc. 41.

This District's local rules require that a response to a written motion be "served and filed within fourteen (14) calendar days after service of the motion." D.N.M.LR-Civ. 7.4(a). Federal Rule of Civil Procedure 6(d) allows an additional three (3) days for mailing. "The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ. 7.1(b).

Defendants filed their motion to compel on October 9, 2015. Doc. 36. They properly served Mr. Velarde by mailing a copy of the motion to Mr. Velarde's attorney the same day. *See id.* at 12. Mr. Velarde had until October 26, 2015, to respond to the motion. He did not do so, nor did he request an extension of time to respond. *See* Doc. 41 at 1. Mr. Velarde's failure to respond constitutes consent to grant the motion.

At Mr. Velarde's deposition, Mr. Velarde's counsel claimed that some of the documents contained on Mr. Velarde's hard drive included privileged attorney-client communications. *See*

Doc 36 at 7. The Court therefore will grant defendants' motion in part, and compel Mr. Velarde to permit defendants and their attorney to review and analyze all non-privileged material on the imaged copies of Mr. Velarde's computer hard drive for evidence relevant to the subject matter of this lawsuit.

IT IS THEREFORE ORDERED:

Destenie M. Visarraga, a court reporter with Kendra Tellez Court Reporting, Inc., shall transfer the two imaged copies of Mr. Velarde's computer hard drive to the defendants' forensic computer analysts by Wednesday, November 4, 2015, at 5:00 p.m. The analysts are permitted to view and analyze the contents of the imaged copies of Mr. Velarde's hard drive, and to prepare a list of all files contained on the hard drive. The analysts shall perform this examination and analysis outside the presence of defendants and/or defendants' attorney. The analysts then shall provide the list of files to D. Diego Zamora, Esq., attorney for Mr. Velarde. Mr. Zamora shall have one week from the date he receives the list to create a privilege log identifying all files which he claims are privileged. Mr. Zamora must transmit the privilege log to defendants' attorney, Robert W. Becker, by 5:00 p.m. on the seventh calendar day following the day he receives the list of files. If the seventh calendar day falls on a Saturday, Sunday, or federal holiday, Mr. Zamora shall transmit the privilege log to Mr. Becker by 5:00 p.m. on the next business day. Mr. Becker then shall direct his computer forensic analysts to separate any files that Mr. Zamora claims are privileged from any other files on the hard drives relevant to the subject matter of this lawsuit. Mr. Becker and his clients may review and analyze the remaining, non-privileged files for evidence relevant to the subject matter of this lawsuit.

Neither defendants nor their attorney may view any file on Mr. Zamora's privilege log absent a court order.

IT IS FURTHER ORDERED that the clerk mail a copy of this order to D. Diego Zamora, Esq., attorney for Eddie Velarde, at 2011 Botolph Rd., #200, Santa Fe, NM 87505-1106.


Laura Fashing
United States Magistrate Judge